

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

OCT 23 2023

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

ROCHELLE SCOTT, individually, and as
co-special administrator of the estate of ROY
ANTHONY SCOTT; FREDRICK WAID, as
co-special administrator of the estate of ROY
ANTHONY SCOTT,

Plaintiffs-Appellees,

v.

KYLE SMITH; et al.,

Defendants-Appellants.

No. 23-15480

D.C. No. 2:20-cv-01872-RFB-EJY
District of Nevada, Las Vegas

ORDER

Before: W. FLETCHER, CALLAHAN, and BENNETT, Circuit Judges.

The motion to dismiss this appeal for lack of jurisdiction (Docket Entry No. 15) is denied without prejudice to renewing the arguments in the answering brief. *See Nat'l Indus. v. Republic Nat'l Life Ins. Co.*, 677 F.2d 1258, 1262 (9th Cir. 1982) (merits panel may consider appellate jurisdiction despite earlier denial of motion to dismiss).

The motion to transmit physical exhibits (Docket Entry No. 11) will be addressed by separate order.

The opening brief and excerpts of record have been filed. The answering brief is due November 22, 2023. The optional reply brief is due within 21 days after service of the answering brief.